

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AMDUL M. REEDUS,

Defendant-Appellant.

UNPUBLISHED

March 5, 1999

No. 203629

Recorder's Court

LC No. 95-013412

Before: Markman, P.J., and Jansen and J.B.Sullivan,* J.J.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of twenty to forty years' imprisonment for the murder conviction and the assault conviction, those terms being consecutive to a two year term for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court committed reversible error when it denied defendant's motion to suppress his statements to the police. We disagree. This Court must give deference to the trial court's findings at a suppression hearing. *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996). This Court reviews the entire record de novo, but will not disturb a trial court's factual findings regarding a knowing and intelligent waiver of *Miranda*¹ rights unless that ruling is found to be clearly erroneous. *Id.*

Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966); *People v Garwood*, 205 Mich App 553, 555-556; 517 NW2d 843 (1994). When a defendant challenges the admissibility of his statements, the trial court must hear testimony regarding the circumstances of the defendant's statement outside the presence of the jury. *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965). Whether the defendant's statement was knowing, intelligent, and voluntary is a

*Former Court of Appeals judge, sitting in the Court of Appeals by assignment.

question of law which the court must determine under the totality of the circumstances. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992).

Defendant's testimony regarding the circumstances surrounding his statements to the police directly conflicted with the testimony of three officers who testified at the *Walker* hearing. The trial court had to make a credibility determination, and it found that the three officers were more credible than defendant. *Cheatham, supra*, 453 Mich 29-30. Defendant could read and write and had finished the eleventh grade. Defendant's detention spanned two days, and on each day of questioning, the duration of questioning was not excessive. Defendant did not appear to lack any necessities, and he was not threatened or abused. Considering the totality of the circumstances, defendant's statements were knowingly, intelligently, and voluntarily made. The trial court's finding that defendant's confessions were voluntary was not clearly erroneous and the statements were properly admitted at trial.

Defendant next argues that there was insufficient evidence presented at trial to support his convictions. We again disagree. This Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crimes were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *Id.*

The elements of second-degree murder are (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). The Michigan Supreme Court has defined malice as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). The intent to kill may be proven by inference from any facts in evidence, *id.*, and the jury may infer an intent to kill from the manner of use of a dangerous weapon. *People v Dumas*, 454 Mich 390, 403; 563 NW2d 31 (1997) (Opinion by Riley, J.). The elements of felony-firearm are (1) the possession of a firearm, (2) during the commission or attempted commission of a felony. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996).

It was stipulated that one of the victims died having suffered four gunshot wounds and one grazing wound, and the cause of death was determined to be a homicide. A bullet removed from the victim's chest was fired from the .25 caliber gun which was recovered when defendant was arrested. The other victim, who had been shot six times, testified that he and his friend had asked defendant and codefendant, Jermaine Hill, if they knew where to get marijuana. At that point, defendant and Hill approached the vehicle, Hill started shooting and then defendant started shooting. Defendant admitted in a statement to police that he heard shots and then started shooting at the victims with a .25 caliber automatic. Casings from bullets shot from that gun were found at the scene. Defendant also admitted that he thought that both victims had been shot since they ran into a pole and defendant had seen blood on the passenger seat.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find the essential elements of second-degree murder, assault with intent to murder, and felony-firearm were proven beyond a reasonable doubt. As to the murder conviction, one of the victims died, defendant's intent can be inferred from his use of a gun, and defendant acted without justification or excuse. As to the assault conviction, defendant shot at the other victim intending to kill him, the intent again being inferred from defendant's use of a gun, and defendant's act if successful would have made the killing murder. As to the felony-firearm conviction, both second-degree murder and assault with intent to murder are felonies, and there was extensive evidence that defendant used a gun when he committed those crimes.

Affirmed.

/s/ Stephen J. Markman

/s/ Kathleen Jansen

/s/ Joseph B. Sullivan

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).